

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

MNEA, SPRINGFIELD EDUCATIONAL	)	
SUPPORT PERSONNEL,	)	
	)	
Petitioner,	)	
	)	
v.	)	Public Case No. UC 88-021
	)	
SPRINGFIELD R-12 SCHOOL DISTRICT,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the filing by Missouri National Educational Association/Springfield Educational Support Personnel (MNEA) of a unit clarification petition seeking to determine the supervisory status of six high school head custodians, three service mechanics and two bookroom clerks employed by the district. The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1978.

A hearing was held on May 24, 1988, in Springfield, Missouri, at which representatives of MNEA and the school district were present. The case was heard by State Board of Mediation Chairman Mary Gant. Upon agreement by the parties, the case was submitted for decision to employer member Rainey Crawford and employee member David Langston.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

## **FINDINGS OF FACT**

The Springfield R-12 School District consists of six high schools, eight junior high schools and 38 elementary schools. Administering the custodial maintenance of the some 65 to 70 buildings within the district is the custodial coordinator who is assigned to the building services department. Reporting directly to the custodial coordinator are three custodial supervisors. The district is divided into three areas, each being assigned one custodial supervisor, with each area having two high schools, two to three junior high schools and from eleven to fourteen elementary schools. Although a head custodian is assigned to each of the junior high schools, the parties agree that those positions are non-supervisory. Accordingly, only those six head custodians assigned to the high schools are at issue. Any reference hereinafter to "head custodians" refers to high school head custodians unless stated otherwise.

The head custodians are each assigned to one of the high schools. They are directly subordinate to one of the three custodial supervisors. The custodial supervisors work from the building services department, separate geographically from the high schools at which the head custodians work. The custodial supervisors' contact with the head custodians consists largely of telephone calls, occasional on-site visits or by leaving written instructions at the school.

The organizational chart submitted by the school district indicates that each high school head custodian is assigned from four to seven custodians to work at their respective high school. However, because the head custodian and other custodians work different shifts, the head custodian will either work his shift alone or with one other custodian.

The duties of the head custodian include performance of many standard custodial tasks such as mopping, cleaning rest rooms, sweeping, cleaning blackboards, etc. Because of the limited daily contact with other custodians assigned to their school, the head custodians relay information to the other custodians by leaving notes to remind

the night shift of any special problems or duties. For example, the head custodian would leave a note reminding the night shift custodians that an after-school activity will require additional chores such as setting up chairs. Absent special activities or problem areas, however, the custodians perform their daily functions -- e.g., sweeping, dusting, mopping, etc. -- with out supervision or any communication from the head custodian. One head custodian estimated that he spends one-half hour to an hour per week relaying information to the other custodians. Another head custodian calculated that she spent five to ten minutes per day writing notes to the next shift. The remaining time is spent performing routine custodial tasks.

During the summer non-school months the routine is changed. In the summer the buildings are generally cleaned extensively and the high school head custodian is responsible for seeing that their building is properly cleaned. The head custodians are provided checklists from the building services department outlining specific tasks that need to be completed in each building. Although the head custodians are responsible for assigning duties to the other custodians for these summer projects, these decisions are routine in nature.

Custodians are required to report to the custodial supervisor if they are going to be absent. If a replacement is unavailable the custodial supervisor relays that information to the head custodian who is authorized to call in a custodian to replace the absentee. In some cases, the head custodian, instead of calling in another custodian, merely reassigns duties of other employees to ensure that all chores are performed.

The head custodians have some authority concerning the assignment of over-time hours. The school district allocates each school principal a certain number of overtime hours that can be used without approval from the building services department. Approval from the district is required when there is overtime to be worked resulting from absenteeism or special needs of a particular school. Also, outside organizations will occasionally rent the school premises and agree contractually to pay any overtime

costs. The record does not disclose a formal policy as to how the head custodian determines which employee will work overtime. Generally, however, the decision as to who works overtime is made on an informal basis by the head custodian who will simply ask for volunteers. If no employees volunteer, the head custodian will either do the work alone or assign the job to another custodian.

Similarly, the vacation schedules of the custodians are determined on an informal basis. The head custodians are asked to arrange a vacation schedule for the employees at the school that would leave a sufficient work force to complete the various cleaning jobs.

The head custodians have limited authority to discipline other employees. Because the custodial supervisors are not present at the high school on a daily basis, the head custodians are more readily aware of any problems that might arise with the work performance of other custodians. These problems are dealt with on a semi-informal basis. Often a minor problem will be resolved by the head custodian by merely asking the custodian in question to improve certain aspects of their job performance. Should problems persist, however, the head custodian will send a memorandum to the involved employee and the custodial supervisor. Testimony indicated that such memoranda or complaints may originate from the school principal, a school teacher, or another custodian, and it is thus not the sole prerogative of the head custodian.

As evidence of the head custodian's disciplinary authority, the school district introduced some 20 exhibits documenting occasions in which work problems resulted in written complaints against custodians. Generally, once a complaint is registered, the custodial supervisor makes an independent investigation of the facts to determine what, if any, disciplinary action need be taken. Although on at least three occasions an offending custodian was transferred to another school, there is no evidence that a custodian was ever demoted, suspended or discharged as a result of a written complaint filed by a head custodian.

The head custodians play no role in the hiring or discharge of other employees. Those powers rest solely with the Board of Education. Similarly, head custodians are not significantly involved in the promotion or evaluation of other employees. The only evidence indicating head custodial involvement in the promotion of an employee involved a recommendation that a custodian be promoted to a higher paying back-up head custodian position, a recommendation that was followed. Besides occasionally informing the custodial supervisor of the progress of newly hired probationary employees, there is no formal or informal process by which the head custodians provide evaluations of other employees to be used for promotion. Although the district is contemplating the use of written evaluations in the future, none are being used at this time.

The head custodians receive the same fringe benefits as all other employees including health insurance, holidays and vacations. Prior to 1986, all custodians were classified as Code 25 employees in the district's salary structure. At that time each head custodian, including those assigned to the elementary and junior high schools, received additional pay based upon the square footage of the building in which they worked. Presently the high school head custodians are classified as Code 29 employees, receiving approximately 10% more in pay than the custodians. A custodian supervisor, on the other hand, with comparable seniority receives approximately 20% more pay than the head custodians.

### **CONCLUSIONS OF LAW**

In 1986 the Board certified MNEA as the public employee representative of certain employees of the Springfield R-12 School District. The parties in that case agreed that the appropriate bargaining unit would include all full time maintenance and custodial employees, and those workers assigned to the service and supply center.

Excluded from the bargaining unit were supervisors, directors, clerical employees, coordinators, analysts, teachers, and all other school district employees.

At the 1986 election the school district challenged the votes of the six head custodians, three service mechanics and two bookroom clerks, arguing in part that the head custodians were supervisory employees. Because the status of those employee positions was not subsequently resolved, MNEA filed a unit clarification petition seeking to determine the status of the head custodians, the service mechanics and the bookroom clerks. At the outset of this hearing the parties stipulated that the service mechanics were to be excluded from the unit but that the bookroom clerks were to be included in the appropriate bargaining unit. Accordingly, the only issue to be resolved by the Board is whether the six high school head custodians should be excluded from the appropriate bargaining unit because of their alleged supervisory status.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73, v. City of St. Louis, Case No. 76-113 (SBM 1976); see, Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo.App. 1977).

In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such

matters.

- (3) The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

MNEA contends that the head custodians in question are working supervisors and, therefore, should be included in the bargaining unit. To the contrary, the school district asserts that the head custodians are true supervisors and therefore should be excluded from the bargaining unit. For the reasons set out below, the Board holds that the head custodians are not supervisors and therefore must be included in the bargaining unit.

The evidence is uncontradicted that the head custodians play no role in the hiring, promotion or discharge of other employees. Concerning the transfer of other employees, the record indicates that only on a few occasions have the head custodians recommendation that another custodian be transferred has been followed.

Although the head custodians do have the authority to file written complaints concerning other custodians, the record as a whole indicates that any complaint filed is independently investigated by the custodial supervisor who makes the final decision as to whether disciplinary action should be taken. The record does not establish a clear pattern by which the Board can conclude that the head custodians effectively recommend the discipline of other employees.

Concerning the head custodians' authority to direct the custodians at the high school, the Board is unconvinced that this authority is indicative of the authority of a true

supervisor. The head custodians' authority is analogous to that of a captain who directs fire fighters at the fire scene. The Board has consistently held that the mere direction of other employees, when little, if any, independent judgment or discretion is exercised, does not constitute true supervisory authority. Clearly, the head custodians are primarily supervising an activity rather than supervising the employees.

The school district argues that the head custodians must be considered true supervisors because they are separated geographically from all the custodians working at the various school facilities. We disagree. The school district's argument fails to recognize that at each of the schools there are principals and teachers who may inform the school district of any problems that might arise with the work of the custodians.

Finally, and perhaps most important in the Board's decision, is that a substantial majority of the head custodians' time is spent performing tasks that are performed by the other custodians. The record indicates that the head custodians spend no more than one hour per week communicating to or directing the other custodians in their work duties. Without question, the head custodians must be considered working supervisors. In view of the foregoing, the Board concludes that the head custodians' authority is closer to that of a leadman than that of a true supervisor and, therefore, should not be excluded from the bargaining unit as being supervisory employees.

### **ORDER**

It is ordered by the State Board of Mediation that the appropriate bargaining unit shall consist of: all Springfield R-12 School District full-time (more than 20 hours) maintenance, custodial, and Service and Supply Center employees, specifically including the bookroom clerks and the head custodians but excluding supervisors, directors, clerical employees, coordinators, analysts, teachers, and all other school district employees.



Signed this 22<sup>nd</sup> day of September, 1988.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant  
Mary L. Gant, Chairman

/s/ David Langston  
David Langston, Employee Member

/s/ Rainey J. Crawford  
Rainey J. Crawford, Employer Member